

**CIVIL SERVICE COMMISSION MINUTES
NOVEMBER 7, 2007**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

Francesca Krauel
W. Dale Bailey
Cheryl Fisher
A.Y. Casillas
Barry I. Newman

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zmary, Executive Officer
William D. Smith, Senior Deputy County Counsel

Selinda Hurtado-Miller, Reporting

**Approved
Civil Service Commission
December 5, 2007**

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
NOVEMBER 7, 2007

2:00 P.M. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
2,4,5,6,10	4	3	

COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Casillas. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Casillas: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Julie
Buechler, Esq., on behalf of **2007-14**, appealing an
Order from the Sheriff's Department.

OPEN SESSION AGENDA
County Administration Center, Room 358

MINUTES

1. Approval of the Minutes of the regular meeting of October 3,
2007.

Approved.

DISCIPLINE

Findings

2. Commissioner Casillas: Julie Buechler, Esq., on behalf of 2007-14, appealing an Order from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Continued.

DISCRIMINATION

Complaints

3. **Terrence Parks**, Library Technician II, alleging gender discrimination by the County Library.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff Recommendation approved. Commissioner Newman assigned.

Findings

4. Commissioner Fisher: **Fred Kuhlman**, Senior Equipment Operator, alleging retaliation and age discrimination by the Department of Public Works. (Continued from the October 3, 2007 meeting.)

FINDINGS AND RECOMMENDATIONS:

Commissioner Fisher heard from Frank Clowney, Esq. on behalf of Mr. Kuhlman. Mr. Clowney stated that this matter was continued from the October 3, 2007 in order to clarify why OIA had not interviewed the witnesses Mr. Kuhlman had identified. Mr. Clowney also mentioned that a person who was promoted to a Sanitation Regional Supervisor position is someone who testified in a recent Commission hearing that he had knowledge and had participated in the past in drinking alcoholic beverages on the job site, the same behavior that Mr. Kuhlman was accused of.

Ms. Rita Smith from the Office of Internal Affairs answered questions from the Commission. Of foremost importance to Commissioner Fisher was the reason why Ms. Smith had not interviewed Mr. Kuhlman's witnesses. Ms. Smith explained that she had given Mr. Kuhlman the benefit of the doubt regarding his allegations and presumed that an age

discrimination statement had been made. She therefore felt it unnecessary to interview witnesses as to whether or not the statement had been made.

Several of the Commissioners had concerns because none of Mr. Kuhlman's witnesses were interviewed which could have uncovered information which Ms. Smith might be unaware of.

Motion by Fisher to continue the matter for OIA to interview Mr. Kuhlman's witnesses, seconded by Krauel.

Commissioner Newman said he would be voting against the motion, that "Ms. Smith made a compelling argument that there was neither benefit nor necessity to go beyond, but she went to the age discrimination case and the skeleton and the characteristics of that case and satisfied herself through the investigation that those interviews would not add anything to the case".

AYES:	KRAUEL, BAILEY, FISHER
NOES:	NEWMAN, CASILLAS
ABSENT:	NONE
ABSTENTIONS:	NONE

Motion carried. Item No. 4 continued.

Commissioner Bailey asked for clarification as to the interviewing of Mr. Kuhlman's witnesses as part of the motion.

Commissioner Newman expressed further concern: ". . .are we setting a precedent that if in a very specified charge and a specified review of that charge, if additional points are raised unrelated to that charge, we are in some way dignifying the necessity of OIA or us to pursue routes that may be irrelevant . . . I really want to raise it so that we understand that we're opening trails that may be neither necessary nor advisable."

5. Commissioner Krauel: **Zadok Othniel**, Park Ranger, alleging retaliation discrimination by the Department of Parks and Recreation.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on September 5, 2007, the Commission appointed

Francesca Krauel to investigate the complaint submitted by Zadok Othniel, which alleged retaliation discrimination by the Department of Parks and Recreation. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation on or about October 16, 2007, and has reported its findings to the Commission. The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Zadok Othniel's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

Motion by Krauel to approve Findings and Recommendations; seconded by Newman. Carried.

6. Commissioner Bailey: **Earnest Davis**, Associate Air Pollution Control Engineer, alleging retaliation and racial discrimination by the Air Pollution Control District.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission (Commission) on September 5, 2007, the Commission appointed W. Dale Bailey to investigate the complaint submitted by Earnest Davis, which alleged retaliation and racial discrimination by the Air Pollution Control District. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. The OIA concluded the investigation on or about October 30, 2007, and has reported its findings to the Commission. The Investigating Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred. It is therefore recommended that Earnest Davis' Rule VI discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no

probable cause to believe that the Complainant has been unlawfully discriminated against.

Motion by Bailey to approve Findings and Recommendations without approving the practice of ignoring part of DHR Policy 1003, and that staff inquire of DHR whether OIA's statement of ignoring the policy is a practice, and if so, does DHR intend to change the policy or follow the policy; seconded by Casillas. Discussion:

Commissioner Newman said he was troubled by the language on page 3 of OIA's Summary Report regarding DHR Policy 1003 and read into the record as follows:

"Moreover, it was concluded that although DHR policy no. 1003 requires that the supervisor sign the final evaluation before presenting it to the employee, his personal experience and those of fellow supervisors, indicate that the employee's signature is often sought first. In fact, Mr. Davis acknowledged that this is common practice. Therefore, the hearing officer concluded that Mr. Davis was not treated differently or otherwise harmed by the absence of his supervisor's signature.'" [OIA Summary Investigative Report, page 3]

Mr. Newman continued: "I am truly troubled by a statement in the record which we are going to be adopting which says in effect that there is widespread ignoring of a DHR rule and reg and that that has now become part of the accepted lore of this County. If the policy exists, the policy should be enforced and the fact that it is commonly ignored . . . is disturbing to me and is problematic to me."

William D. Smith, Sr. Deputy County Counsel, explained that approval of the Findings and Recommendations does not mean that the Commission is approving that particular practice of ignoring DHR policy 1003.

Motion carried; Findings and Recommendations approved.

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SELECTION PROCESS

Appeals

7. **Bathsheba Benjamin**, candidate, appealing her non-selection for the classification of Account Clerk by the Health and Human Service Agency.

RECOMMENDATION: Deny Request.

Staff Recommendation approved.

8. **Linda Rohrman**, candidate, appealing her non-selection for the classification of Administrative Secretary II by the Health and Human Services Agency.

RECOMMENDATION: Deny Request.

Staff Recommendation approved.

Findings

9. **Wendy Hughes**, appealing the Department of Human Resources' removal of her name from the employment list for Correctional Deputy Probation Officer.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 9 Ratified.

OTHER MATTERS

Request for Reinstatement

10. **Aida Delgado**, former Office Assistant, requesting employment reinstatement with the Health and Human Services Agency.

RECOMMENDATION: Deny Request.

Discussion: Aida Delgado addressed the Commission explaining why her appeal was untimely. The Commission believes that Ms. Delgado, in good faith attempts, would have been timely with her appeal, if she would have been successful in communicating with staff. (There had been a malfunction of equipment, which prevented communication between staff and Ms. Delgado).

Motion by Krauel to grant a hearing; seconded by Bailey. Carried. Commissioner Fisher assigned.

Extension of Temporary Appointment

11. Department of Public Works

1 Project Manager (Eric Brennecke)

RECOMMENDATION: Ratify.

This item was removed from the Agenda

INFORMATION

12. **Milton Jeffries**, former Equipment Operator, appeal of an Order of Suspension and Charges from the Department of Public Works (assigned to Commissioner Casillas on July 18, 2007); complaint alleging retaliation, age and racial discrimination by the Department of Public Works (assigned to Commissioner Fisher on September 5, 2007). Subsequent to the filing of these appeals Mr. Jeffries retired from County service. Therefore, the Civil Service Commission lacks jurisdiction and there will be no further action in these matters. *Zuniga v. Civil Service Commission*, 134 Cal. App. 4th, 1255 (2006).

13. Public Input.

Eloy Villa, Executive Director of the Office of Internal Affairs, addressed the Commission regarding the interviewing of witnesses during an OIA investigation. Mr. Villa stated that generally, witnesses are interviewed if their testimony has relevancy and ties in with the allegation(s) being investigated. It is the discretion of the Office of Internal Affairs as to which witnesses are relevant. Mr. Villa offered two solutions regarding the Commission's inquiries into what witnesses are relevant and which are not: 1) communicate with the Commission's investigating officer during the investigation and/or 2) after reviewing the OIA reports, prior to the meeting, address concerns with OIA.

ADJOURNED: 3:42 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:

DECEMBER 5, 2007